

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

RONALD McCLELLAND,	§	
Petitioner,	§	
v.	§	C.A. NO. C-05-377
	§	
WARDEN JOE D. DRIVER,	§	
Respondent.	§	

**MEMORANDUM OPINION AND ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS**

On February 6, 2006, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 18). Objections were timely filed (D.E. 23). In his objections, petitioner reiterates his argument that the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005) should apply retroactively on collateral review. Petitioner's argument is foreclosed by Fifth Circuit precedent:

[I]t is clear that *Booker* has not been made retroactive to cases on collateral review by the Supreme Court. The Supreme Court did not so hold in *Booker*, nor has the Court done so in any case since *Booker*. The same is true with respect to *Apprendi* and *Blakely*. In fact, in *Booker*, the Court expressly held that both the Sixth Amendment holding and its remedial interpretation apply to all cases on direct review. The Court could have, but did not, make any reference to cases on collateral review.

In re Elwood, 408 F.3d 211, 213 (5th Cir. 2005) (internal quotations and citations omitted).

Having reviewed *de novo* the Magistrate Judge's Memorandum and Recommendation and the pleadings on file, this Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.

Accordingly, respondent's Motion to Dismiss (D.E. 15) is granted and petitioner's cause of action for habeas corpus relief is dismissed.

ORDERED this 8 day of May, 2006.

Hayden Head
HAYDEN HEAD
CHIEF JUDGE